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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/256,647	02/23/1999	GIGI CHU	19463-1	1090

7590

04/09/2004

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EXAMINER
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DINH, DUNG C

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 04/09/2004

27

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/256,647

Applicant(s)

CHU ET AL.

Examiner

Dung Dinh

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-9, 16, 17 and 19-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3 and 5-9 is/are allowed.
- 6) ☒ Claim(s) 16, 17, 22 and 24-35 is/are rejected.
- 7) ☐ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 2153

**DETAILED ACTION**

***Response to Arguments***

Applicant's response to the Restriction (paper #24) has been fully considered. The restriction is withdrawn.

Claims 1-3, 5-9, 16-17, 19-35 are pending.

Claims 1-3, 5-9 and 23 were indicated as containing allowable subject matters in prior office action (paper #17).

Claims 16-17, 19-22, 24-35 are rejected as stated below.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

*A person shall be entitled to a patent unless --*

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 16-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Bland et al. US patent 5,732,218.**

Art Unit: 2153

As per claim 16, Bland teaches a method of monitoring end-user experience of a plurality of users essentially as claimed, comprising:

detecting that a user invokes a connection code to connect the client system to the distributed network (col.4 lines 60-63, user request connection to server 103-104);

in response, monitoring the connection code to obtain user experience data, wherein the experience data is related to user's experience with the distributed network (col.4 lines 10-32);

transmitting the obtained data to an experience test server (col.4 lines 63-64).

As per claim 17, Bland teaches that the monitoring step is done as a background process (col.3 lines 22-39).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

Art Unit: 2153

Claims 24, 19-22, 25, 26, 30, 27-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisdikian et al. US patent 6,205,413 and further in view of Downs et al. US patent 6,112,243.

As per claim 24, Bisdikian teaches a method for monitoring network-based services capable of collecting data about end-user experience [col.3 lines 35-50]. Bisdikian teaches the collection process can be run on an end-user' device [col.3 line 57-50 "... coexisting on the same computer that a regular subscriber uses"] and sending collected result to experience test server [fig.4 server 40, col.5 lines 42-51]. Bisdikian does not specifically disclose how the monitoring tasks are distributed to the end-users' computers. Downs teaches a method for distribute tasks to various end-user devices (resource provider computers) over the Internet [col.5 lines 25-39] and reporting the result from the end-user device to the server [col.2 line 24]. Downs teaches configuring the end-user devices to notify the server when the end-user device is available and capable of processing an assigned task [see abstract, col.6 lines 25-45]. Hence it would have been obvious for one of ordinary skill in the art to combine the teaching of Downs to Bisdikian because it would have enable distribution of the monitoring tasks over the Internet to

Art Unit: 2153

available and capable end-user devices for running the monitoring tasks.

As per claim 19, Downs teaches distribute the task over time to available devices [col.4 lines 10-32].

As per claim 20, Downs teaches checking quota limits [col.6 lines 55-6-] before instructing the user-device (resource provider) to run a task.

As per claims 21-22, since the availability of end-user device that can run the test (resource-provider) changes dynamically [see Downs col.3 lines 29-34], it is apparent that the Bisdikian as modified would be distributing tests over time and dynamically changing test allocation among user-device without prior knowledge.

As per claims 25 and 26, it is apparent that the test and transmission of the collected data would operate transparent the user operating the end-user device. It would have been obvious for one of ordinary skill in the art to make the test and transmission process transparent to the end-user because it would have limit intrusion and disturbance on the end-user experience.

As per claim 34, Bisdikian teaches the end-user devices are connected to the distributed network under control of the user who are customer of a provider of network-based service (apparent from col.3 lines 59 "subscriber"). Downs teaches the end-user device

Art Unit: 2153

can be connected and disconnected the network at any time by the user (Downs col.3 lines 33-38).

As per claims 27-33 and 35, they are rejected under similar rationales as for claims 24, 19-22, 25-26 and 34 above.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung Dinh whose telephone number is (703) 305-9655. The examiner can normally be reached on Monday-Thursday from 7:00 AM - 4:30 PM. The examiner can also be reached on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached at (703) 305-4792.

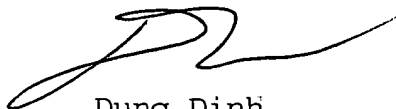
Any inquiry of a general nature or relating to the status of this application should be directed to the Group 2100 Customer Service whose telephone number is (703) 306-5631.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, DC 20231

**or faxed to:** (703) 872-9306

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA, Fourth Floor (Receptionist).



Dung Dinh  
Primary Examiner  
April 5, 2004